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1948.

File No. Habitual offenders II 48

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Legal **DEPARTMENT**

B **BRANCH**

Subject:—

Rules and Notifications under the Bombay Habitual offenders, Act, 1947

P.8 (E)

File No. Habitual offenders II/48

Std. Sectt. Slip 24 B e.

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Office of the R.L.A.

A revised tenatative draft of the Rules is sent herewith.

2. The Home Department draft does not in many places provide for Greater Bombay. Necessary provisions so as to make the rules operative in Greater Bombay also have been in-corporated in the revised draft. In some cases reference to village police patel only would be insufficient. In such cases reference has been made to the officer in charge of the Police station. The Home Department should verify whether the amendments made in this connection are suitable.

3. For obvious reasons the Bombay Criminal Tribes Rules, 1930, cannot be followed in many respects. Some of the provisions from the Home Department draft have therefore been deleted. Under the scheme of the Habitiual Offenders Restriction Act, 1947, the dependants of the habitual offener even with their consent cannot be detained in a settlement. All references to dependants have been deleted. It would have been better if the rules under the Restriction of Habitual Offenders (Punjab) Act, 1918, on which the Bombay Act is modelled, had been consulted.

4. The draft rules require previous publication under section 22(1). The revised draft provides for this.

5. Revised draft rule 2. The definition of "Dependent settlers" hasbeen delted for the reasons stated in para. 3 above. New definitions of "Settlement" and "Reclamation Officer" is suitable. Instead of "Principal settler" a definition of "Settler" has been provided. it is for consideration of the Department whether instead of the expression "order of restriction ofreport" the expression "order to report" may be used throughout the rules.

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6. H,D. draft rule 5. The rule is not covered any of the provisionsof section 22 and is moreover vaga and supperfluous. It has been deleted and subsequent draft rules have been renumbered.

7. H.D. draft rule 6(2) The provision of reporting through another personsis inconsistent with the provisions of the Act. The Act contemplates that the persons against whom an order is made should report personally (see wording of section 2(2) (b) of the Act). The sub-rule has been deleted.

8. H.D.draft rule 15. This rule which proposes to convert in effect all orders of restriction of movement into orders of restriction of report is ultra vires and has been deleted.

9. H.D.draft rule 16. Under section 22(2)(v) rules can be made prescribing the other particulars to be included in an order of restriction. The proposed rule which is intended to confer ceratin powers on magistrates and police officers is not covered by that section and has been deleted.

10. Revised draft rule 22. The Department may verify whether the draft as revised is suitable from the administrative point of view.

11. Revised draft rule 28. The rule provided that unless exempted in this behalf no kellter shall leave the limits of the selliment without a pass. It is not clear who is theexempting authority. The Home Department should make this clear in the rule.

12. Revised draft rule 34. The provision in H.D. draft rule 35(j) is ultra vires the Act and has been deleted.

13. Revised draft rule 36. - The latter part in H.D. draft rule 37 is ultra vires and has been omitted.

14. H.D.draft rule 38. It is a doubtful validity and has been deleted.

15. H.D. draft rule 40.- The power to arrest cannot conferred on the settlement officers by a rule. The draft rule has therefore been deleted.

16. Revised draft rule 38.- This rule merely authorises reclamation officer to exercise the powers under section 15(3). The provision is inappropriate in the rules. For carrying out the object in view a separate order may be issued under the said section authorising the Reclamation Officer to exercise the powers.

* H.D. Draft rule 45:- This rule is inconsistant with Section 15(2) and has been deleted. *

17. Revised draft rule 46.- The Department may consider whether the Superintendent should be the ex-officio Secretary of the Committee or provision may be made enabling him to attend the meetings of the Committee.

19. Revised Form E.- The Department may consider whether provision may be made in the Form for the various endorsements to be made by the village police patel and the Officer in charge of the Police Station as laid down in revised draft rule 13. (Cf.Form I).

20. I think it desirable that these under rules should be discussed with the officer who has experience of the work of settlements. I will finalise the tentative draft sent herewith after personal discussion with such officer. The Home Department may ask the officer concerned to discuss the draft rules with me as soon as possible.

Sd/- P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 3015, dated the29th March,1948.

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In consultation with the Chief Inspector or Certified Schools, the draft rules (pages 163 to 227) have been further revised and finalised. They have been renumbered and cross references corrected wherever necessary. The important changes made in the revised draft sent with R.L.A's opinion No.3015, dated 29th March 1948 are expalined below.

Revised draft rule 2.

The definition of "dependant settlers" has been deleted for the present. It is understood that the Chief Inspector will examine the question whether executive instructions may be issued on the subject or a suitable provision made in the rules.

Revised draft rule 5.

This corresponds to H.D. draft rule 5. The wording has been suitably revised so that it may be covered by section 22(2)(v).

Revised draft rule 6(3).

This draft rule which corresponds to H.D. draft rule 6(2) and which is based on proviso (b) in rule 16 of the Bombay Criminal Tribes Rules, 1930, has been retained. Such provision may be held as falling under sub-section (1) of section 22.

H.D. draft rule 15.

This has not been incorporated. The Chief Inspector has been asked to submit a revised draft rule specifying which provisions of the rules should apply to persons in respect of whom orders of restriction of movement have been passed.

H.D.draft rule 20.

The object in view could be achieved by issuing suitable executive instructions. Moreover, the proposed proviso to sub-rule (1) is likely to be interpreted to restrict the powers of Government to make orders under section 15(2) to the cases

mentioned in the proviso. The draft rule being unnecessary and inconsistent with section 15(2) has been delted.

Revised draft rule 34(j). The provision in the H.D. draft rule 35(j) has been retained as it is also found in rule 54(1)(l) of the Criminal Tribes Rules and may be held to be covered by section 22(2)(vii).

Revised draft rule 36. Same remarks as on revised draft rule 34(j). The draft rule corresponds to H.D. draft rule 38. The wording of therevised draft rule has been brought in line with the words of rule 56 of the Criminal Tribes Rules.

Revised draft rule 37. Same remarks as on revised draft rule 34(j). It corresponds to H.D.draft rule 37 and rules 57 and 59 of the Criminal Tribes Rules.

Revised draft rule 39. Same remarks as on revised draft rule 34(j). It corresponds to H.D. draft rule 60 and rule 61 of the Crimnal Tribes Rules.

H.D. draft rule 41. For the reasons stated in paragraph 16 of the R.L.A's opinion dated 29th March 1948, the provision is inappropraite in the rules and has therefore been delted.

Revised draft rule 45.

It provides that the Superintendent shall be the ex-officio secreatory of the Visiting Committee.

A copy of the Punjab Rules obtained from the East.Punjab Government sent herewith. The Home Department is requested to consider whether in view of the provisions contained in those rules any changes should be made in the draft rules.

Sd/ P.L.Lad.

Remembrancer of Legal Affairs.

L.R. to H.D., No.3701. dated 16th April 1948.

AIRMAIL.

EXPRESS DELIVERY.

No. 2127-H-48/19335.

From

Nawab Singh, Esq., I.C.S.,
Home Secretary to Government,
East Punjab.

To

The Secretary to the Government of Bombay,
Legislative Department, Bombay Castle.

Dated Simla- 5 the 7th April, 1948.

Sub:- Rules under the Restriction of Habitual offenders (Punjab)Act,1918.

Sir,

With reference to your letter No.3106, dated the 30th March on the subject noted above, I am directed to forward a typed copy of the rules framed under section 16 of the Restriction of Habitual Offenders (Punjab)Act 1918. In the absence of Complete records it is not possible for this Government to say whether or not these rules areuptodate.

I have the honour to be,
Sir,
Your most obedient Servant,

Sd/-
Under Secretary General,
of Home Secretary to Government, East Punjab.

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..... of the R.L.A.

Para. 2 of E.I.C.I's note dated 5-5-48 at p.

Draft rule 44A suggested by the Chief Inspector is not free from legal objection. Under this rule it is proposed to hold the settler responsible for certain breach of discipline by any dependant and to take power to impose on the settler for such breach any of the penalties specified in rule 35, subject of course to the condition that the Superintendent should be satisfied that the settler did not exercise proper supervision or was accessory to the breach. Such provision is likely to be frowned upon by the Courts as the worst type of vicarious liability. Moreover, one of the penalties which could be imposed under rule 35 is prosecution under section 18 (vide clause (vii) of rule 35). In the prosecution, the Superintendents decision that the settler did not exercise proper supervision or that the settler was accessary to the breah would not be bindingon the Courts. The provision for imposing the penalty of prosecuting should be therefore delted and the proposed rule revised with a view to restricting it to the departmental punishments provided in clauses (i) to (vi) of rule 35 and to bring it within the scope of sub-section (1) and clauses (vii) and (ix) of sub-section (2) of or section 22 of the Bombay Habitual Offenders Restriction Act, 1947. The revised draft rule, which may be renumbered as draft rule 45, may be as follows, namely:-

" 45(1) If the Reclamation officer is satisfied that it is in the interests of a settler that his dependants should reside with him in the settlement, the Reclamation Officer, may, if they so desire, permit them to reside in the settlement:

Provided that before such permission is granted the Reclamationofficer shall-

(i) asoertain by making such enquires as he deems fit that according to the custom of the community to which the settler belongs, he is responsible for the maintenance of the

dependants and that the settler and his dependants cannot suitably live apart, and

(ii) obtain an undertaking from the settler that the dependants shall observe the discipline of the settlement and that he shallbe responsible forthe breach of the provisions of rule 34 specified in sub-rule (2) committed by any of his dependants.

(2) The dependants of the settler shall, so long as they reside in the settlement, onserve the discipline of the settlement and particularly theprovisions contained in clauses (b) to (i) andclause (k) of rule 34.

(3) The settler shall exercise proper supervision over his dependants and shall not be an accessory to any breach of the provisions of rule 34 specified in sub-rule (2) committed by any of his dependants.

(4) Any breach of the provisions of rule 34 spefified in sub-rule (2) by any of the dependants may, at the discretion of the Superintendent, be dealtwith as provided in clauses (i) to)vi) of rule 35 and the ~~punishment~~ punishment imposed on the settler concerned, if the Superintendent, after making the necessary enquiry is satisfied that the settler did not exercise proper supervision over his dependants or that the settler was accessory to the breach.

Explanation. For the purposes of this rule "dependants" means the wife of the settler and his children under 16 years of age.

Draft rules 45 to 47 may be renumbered as draft rules 46 to 48, respectively.

Para. 3 at p.245. Draft rule 11 suggested by the Chief Inspector would fetter the discretion of the Court of Magistrate under sections 9 and~~x~~10 of The draft rule has therefore been revised on the lines of draft rule 6(1) so that it may serve as a guide to the courts and apply if there is no specific direction in the order of restriction.

para.4 at p.247. The new draft sub-rule (3) of rule 6 as amended at p.253 as under .

Para. 7 at p.247. No point for legal opinion is raised in this paragraph. The draft rules have been finalised by the R.L.A. and the question whether they may be shown to any other officer or not is for the Department to consider.

Sd/- P.H Lad.
Remembrancer of Legal Affairs.

U.R. to H.D.No. 5423. dated the 9th June 1949.

of the Act. Particularly, the proposed exception would be inconsistent with the provisions of Section 10